IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-363

PETER H. MADDEN AND MICHAEL J. MADDEN,
Petitioners,

v.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, TRUSTEE, ETC., ET AL.,
Respondents.

BRIEF OF RESPONDENT MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, TRUSTEE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Daily Record Co., Baltimore, Md. 21202

INTRODUCTION

This brief will omit separate formal Argument, in the interest of brevity, because the matters and grounds why this case should not be reviewed by this Court are apparent just from the corrections we have made below in the Questions Presented and Statement of the Case contained in the petition.

The Court of Special Appeals of Maryland has correctly decided state law questions only and has not decided a federal question of substance not heretofore determined by this Court or in a way probably not in accord with its decisions. Nothing, either of supposed fact or law, especially nothing of substantial federal law, set forth in the petition tends to show that the review sought is either desirable or in the public interest. On the contrary, it would be undesirable and against the public interest to issue the writ. This baseless, expensive case has already consumed seven years in the courts and now should be permitted to rest.

QUESTION PRESENTED

Madden's* Questions Presented, as he describes them in pages 3-8 of the petition, are not properly presented, mainly because the description embodies numerous, serious, fundamental misrepresentations concerning (1) the facts which were established and found as facts by the trial Court, and approved on appeal as fully supported by the evidence, and (2) the actual decisions of the trial Court and the Court of Special Appeals. It also contains many completely unwarranted, slanderous aspersions upon the

* The petition is filed by Peter H. Madden *pro se* and as attorney for his brother, both beneficiaries of their great-grandfather Hammond's trust here involved, but, for convenience, it will be referred to in this Brief as the petition of Peter H. Madden, whose work it is and who, being a lawyer, must be held to have knowledge of his responsibilities as such.

character of those who opposed Madden's views, including the Maryland courts.

For example, the Trustee, which Madden sought to surcharge because of its sale in 1947 to its tenant, the Maryland Jockey Club, of a portion of the real estate on which the Pimlico Race Track was located, did not own, and could not, and did not, sell, a race track *business,* i.e., "business assets consisting of . . . race names . . . and *earning* power". The going race track business at Pimlico then already belonged outright, and for thirty-nine years had continuously belonged outright, to the Maryland Jockey Club, which, under a series of ordinary, conventional land leases, had independently operated that business for itself and its stockholders on the land leased from the Trustee, and not in any respect for, or as "tenant-agent" of, the Trustee, to whom its only obligation was to pay rent for the land. Again, the Jockey Club, as tenant, did not merely "contribute $200,000 in the form of its management organization and cash". It "contributed" by owning and operating the entire racing enterprise, except for the land owned by the Trustee, and had devoted thousands of dollars of its own assets to that enterprise.

Furthermore, the Maryland courts did not make any "dare-say fraudulent approaches", or make rulings "arbitrary and subjective", or otherwise: (1) that, in approving the adequacy of the Trustee's sales price for this real estate, the "standard of 'full fair market value' " should not be applied; or (2) that "the controlling standard be 'land salvage value' " or (3) that assets belonging to the Trustee "be disregarded or accorded no weight"; or (4) "that the land underneath the race track valued not for race track use, but for alternative residential use, was *the sole criterion* for testing for price inadequacy"; or (5) that "delicensing of Pimlico had occurred." The last point is Madden's circumlocution for a supposed ruling that, because continued renewal of a license for race track operation at Pimlico was then

seriously threatened by pending valid State legislation, the value of the land for possible race track purposes could not be considered nor given any weight whatever. What is more, the Maryland courts had no occasion to hold, and did not hold, that these supposed legal rulings, *which they did not make,* were constitutional under the due process clause.

Moreover, even if the Maryland Courts had made the rulings Madden falsely attributes to them, there would be no occasion for this Court to review them, for the decision below is fully supported by adequate and independent state grounds. The trial court found that, even if Madden's valuation theory was accepted, the evidence established that the price received by the Trustee in the 1947 sale was adequate (App. 48a), and both the trial court and the Court of Special Appeals of Maryland held that the Trustee had committed no breach of its duties of care and loyalty. (App. 21a, 22a-28a, and 46a).

The fourth Question Madden presents is whether this Court should make a "specific ruling as to damages" because of the Maryland judiciary's "clear bias toward out-of-state remaindermen" alleged to exist because the Court of Special Appeals of Maryland reasonably refused him permission to file a brief on appeal exceeding 300 pages, which he nevertheless printed and persisted on four occasions in trying to file. Manifestly this Question is as frivolous and eccentric as his others. That long-suffering Court, with outstanding patience and consideration, permitted Madden to file a brief of 175 pages (125 pages longer than that permitted by the Court's general rule), which contained all of his valuation contentions.

STATEMENT OF THE CASE

For the same reasons (i.e., blatant, gross misrepresentations of substance contained therein far too numerous for complete correction), the Trustee is, of course, dissatisfied with Madden's Statement of the Case set

forth in pages 3-7, inclusive, and continued in pages 11-41, inclusive, of the petition. Here again, Madden's fundamental and all pervading error — the key to this whole tragic, expensive, baseless case — lies in his persistent fixation or delusion that the Trustee owned and sold, not merely a piece of improved real estate, but *a race track business* (which of course, it did not own and which was owned outright and operated by its lessee, the Jockey Club) and that the Trustee should have received as a selling price the capitalized value (on a return of 9.5%), not just of the annual income from the land which it received in the form of rent, but of that rent *plus the annual earnings of the Jockey Club from the licensed racing enterprise* which it owned and conducted. Madden's petition discloses (p. 27) that the $644,393, which he claims was the 1942-46 average "Pimlico" net earnings, consists of $567,527 (88%) which belonged outright to the Jockey Club, and of only $76,866 (12%) which belonged to the Trustee; and that the grossly inflated $6,779,014, which Madden claims is the capitalized value of those earnings at 9.50%, consists of $5,965,532 attributable to the Jockey Club's business efforts and of only $813,482 attributable to the Trustee's real estate.

The only proper *Statement of the Case* is the following:

In 1905, Hammond, Madden's great-grandfather, acquired land at Pimlico, a suburb of Baltimore, on which a race track and racing facilities had long been located. In 1908, he leased this improved land to the Maryland Jockey Club, which independently operated the racing business there. In 1909, he died, leaving his estate, including the leased Pimlico real estate, to the Trustee, in trust (with full power to sell or lease) to pay the income to his daughter, an only child, for life. On the death of the life tenant (which occurred in 1972) this trust was to cease and the estate was to be distributed outright to the life tenant's descendants, including her grandson Madden.

In 1913, the Trustee renewed the Hammond's lease to the Jockey Club and thereafter continued it as tenant under a series of four leases, similar to the first except for increases in rent, the last to expire in 1949. As we have said, the Jockey Club continuously owned outright, and independently operated, the Pimlico racing business, having and exercising the only state license to do so, making all the decisions, paying for all the physical improvements, buying adjoining land for stables and parking, developing race names, dealing with the State Racing Commission, complying with racing regulations, attracting, and contracting with, race horse owners, defraying all the operating expenses, insurance, rent and taxes, bearing all great risks of the hazardous racing business, and receiving (as it was entitled to receive) all the net income in most of the years, and sustaining net losses in the depression years. The Trustee, of course, was entitled to, and received, nothing except the stipulated rent.

The Jockey Club before 1947 became dissatisfied with the Pimlico site and threatened, and took serious steps toward, the abandonment of Pimlico as a track licensed for racing and the transfer of its licensed racing business to a new location, if it could obtain legislation from the State permitting it to do so. There were two reasons for this: (1) the land was not large enough to accommodate automobile parking demands; and (2) the tenant objected to paying for physical improvements demanded by the State Racing Commission, which, when made, would become the property of the Trustee.

In early 1947, Senate Bill 101, a State administration measure, was introduced in the Maryland Legislature to amend the existing statutory law which limited racing to only four locations in the State, to permit the abandonment of Pimlico as one of the racing sites and to permit the Jockey Club to be licensed at a new location. The evidence showed that the value of the real estate owned

by the trust for use as a race track was $1,540,000 but that, if Senate Bill 101 was enacted and the Jockey Club was permitted to move, Pimlico could no longer be used as a race track and its value would have been only $540,000 at its highest and best use of residential development. Senate Bill 101 was passed in the Senate to the third reading, but the Trustee, by strenuous lobbying efforts, succeeded, *by the margin of one vote,* to have the bill amended so that, if passed, there could be five race tracks, Pimlico remaining as one of them. Active and weighty opposition to the Trustee's amendment, however, still existed and there was considerable danger in February and early March of 1947 that the less drastic amendment might ultimately be lost and that Senate Bill 101 as originally introduced would become law.

Faced with the threat of losing its tenant and the more serious legal threat that its real estate might well become substantially reduced in value by being restricted to use for residential development purposes only, the life tenant and the Trustee, acting together, carried on lengthy negotiations to sell the real estate. Based on two appraisals which it obtained from outstandingly competent appraisers, including Day & Zimmerman, and upon a capitalization of the average rentals it expected to receive, the Trustee's first asking price was $1,540,000. A sale to the Jockey Club was finally agreed to in March 1947 at a price of $1,115,000 plus some additional rent. The life tenant, by her attorney, actively advised and participated in these months of negotiations and desired the sale and fully approved the price.

Shortly after the life tenant died in 1972, Madden and his relatives instituted the present suit to surcharge the Trustee because of this sale transaction in 1947, twenty-five years earlier. There were two trials. In the first trial, consuming fifteen trial days, the trial Court dismissed the complaint at the close of Madden's evidence. The Court of Special Appeals, finding expressly, however, that there

was sufficient evidence to uphold the findings against Madden on all his claims, reversed the judgment on procedural grounds so that fact findings could be made regarding them.

The second trial was a lengthy, plenary, painstaking one consuming fifty-six trial days with twenty-one additional witnesses from both sides, and with 185 new exhibits. At its conclusion, the trial Court, in a transcribed oral opinion, made detailed specific findings of fact, all of them, without exception, in favor of the Trustee. On Madden's second appeal, the Court of Special Appeals dealt with a printed Record Extract, which Madden prepared, comprising 6,472 pages in 23 volumes, considered Madden's brief of 175 pages and affirmed the trial Court's judgment, except as to certain counsel fees, holding that its findings of fact were sufficiently supported by competent evidence. Madden, although on four occasions he had repeatedly tried to force his 300 page brief on the Court, did not trouble to attend or be represented at the oral argument. Six Maryland judges have unanimously recognized that findings of fact were supported and valid compelling the conclusions that there were (1) no breach of trust, and (2) no inadequate price. The Court of Appeals of Maryland denied petitions by Madden and others for certiorari to review the judgment of the Court of Special Appeals "as there has been no showing that review by certiorari is desirable and in the public interest."

CONCLUSION

In the above discussion of Madden's Questions Presented and Statement of the Case, the Trustee has shown that no constitutional or other federal question of substance is involved, and that the judgment of the Court of Special Appeals of Maryland should not be reviewed. It submits that the petition for certiorari should be denied.

Respectfully submitted,

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